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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/552,857	02/08/2006	German Spangenberg	FREE.P-007	4572
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Larson & Anderson, LLC			EXAMINER	
P.O. BOX 4928			KUBELIK, ANNE R	
DILLON, CO 80435				
			ART UNIT	PAPER NUMBER
			1638	
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			01/29/2009	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/552,857

Applicant(s)

SPANGENBERG ET AL.

Examiner

Anne R. Kubelik

Art Unit

1638

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 1 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☐ Responsive to communication(s) filed on ____.
- 2a) ☐ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 32-61 is/are pending in the application.
- 4a) Of the above claim(s) ____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) ____ is/are allowed.
- 6) ☐ Claim(s) ____ is/are rejected.
- 7) ☐ Claim(s) ____ is/are objected to.
- 8) ☒ Claim(s) 32-61 are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on ____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. ____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/55/08)
Paper No(s)/Mail Date ____.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date ____.
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: ____.

Election/Restrictions

Restriction is required under 35 U.S.C. 121 and 372.

This application contains the following inventions or groups of inventions which are not so linked as to form a single general inventive concept under PCT Rule 13.1.

In accordance with 37 CFR 1.499, applicant is required, in reply to this action, to elect a single invention to which the claims must be restricted.

Group I, claims 32-34, 37, 38-39, 41-48, 50-54, and 56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:2, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group II, claims 32-34, 37, 38-39, 41-48, 50-54, and 56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:4, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group III, claims 32-34, 37, 38-39, 41-48, 50-54, and 56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:6, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group IV, claims 32-34, 37, 38-39, 41-48, 50-54, and 56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:8, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group V, claims 32-33, 37-38, 40-47, 49-53, and 55-56 (all in part) and claim 35, drawn to a nucleic acid encoding SEQ ID NO:10, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group VI, claims 32-33, 36-37, 39-46, 48-52, and 54-56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:12, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group VII, claims 32-33, 36-37, 39-46, 48-52, and 54-56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:14, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group VIII, claims 32-33, 36-37, 39-46, 48-52, and 54-56 (all in part), drawn to a nucleic acid encoding SEQ ID NO:16, constructs comprising it, plants, plant cells and seed comprising the constructs, a method of making the plants.

Group IX, claims 57-59 (all in part), drawn to a protein of SEQ ID NO:2.

Group X, claims 57-59 (all in part), drawn to a protein of SEQ ID NO:4.

Group XI, claims 57-59 (all in part), drawn to a protein of SEQ ID NO:6.

Group XII, claims 57-59 (all in part), drawn to a protein of SEQ ID NO:8.

Group XIII, claims 57-58 (all in part) and claim 60, drawn to a protein of SEQ ID NO:10.

Group IVX, claims 57-58 and 61 (all in part), drawn to a protein of SEQ ID NO:12.

Group XV, claims 57-58 and 61 (all in part), drawn to a protein of SEQ ID NO:14.

Group XVI, claims 57-58 and 61 (all in part), drawn to a protein of SEQ ID NO:16.

The inventions listed as Groups I-XVI do not relate to a single general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2, they lack the same or corresponding special technical features for the following reasons:

The technical feature linking Groups I-XVI appears to be that they encode or are an enzyme involved in tannin biosynthesis.

However, Howles et al (1996, SWISS-PROT database Accession Number P51088, Chalcone synthase 6, cited in the search report) teach a protein with 98% identity to SEQ ID NO:2. Thus, claim 57 among others, is not novel.

Therefore, the technical feature linking Groups I-XVI is not special and the Groups are not so linked under PCR Rule 13.1.

Applicant is reminded that a determination regarding unity of invention is made without regard to whether a group of inventions is claimed in separate claims or as alternatives within a single claim (MPEP 1893(d), last paragraph).

Applicant is advised that for the reply to this requirement to be complete, it must include (i) an election of an invention to be examined even though the requirement may be traversed (37 CFR 1.143) and (ii) identification of the claims encompassing the elected invention.

The election of an invention or species may be made with or without traverse. To reserve a right to petition, the election must be made with traverse. If the reply does not distinctly and specifically point out the supposed errors in the restriction requirement, the election shall be treated as an election without traverse. Traversal must be present at the time of election in order to be considered timely. Failure to timely traverse the requirement will result in the loss of the right petition under 37 CFR 1.144.

Should Applicant traverse on the ground that the inventions are not patently distinct, Applicant should submit evidence or identify such evidence now of record showing the inventions to be obvious variants or clearly admit on the record that this is the case. In either

instance, if the examiner finds one of the inventions unpatentable over the prior art, the evidence or admission may be used in a rejection under 35 U.S.C. 103(a) of the other invention(s).

If claims are added after the election, Applicant must indicate which of these claims are readable on the elected invention.

Applicant is reminded that upon the cancellation of claims to a non-elected invention, the inventorship must be amended in compliance with 37 CFR 1.48(b) if one or more of the currently named inventors is no longer an inventor of at least one claim remaining in the application. Any amendment of inventorship must be accompanied by a petition under 37 CFR 1.48(b) and by the fee required under 37 CFR 1.17(i).

Sequence Rules

This application contains sequence disclosures that are encompassed by the definitions for nucleotide and/or amino acid sequences set forth in 37 CFR 1.821(a)(1) and (a)(2). However, this application fails to comply with the requirements of 37 CFR 1.821 through 1.825.

Sequence identifiers are missing from the sequences in Table 2-5 and on pg 26, lines 7-8.

Full compliance with the sequence rules is required in response to this Office action. A complete response to this Office action must include both compliance with the sequence rules and a response to the issues set forth herein. Failure to fully comply with both of these requirements in the time period set forth in this Office action will be held to be non-responsive.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Anne R. Kubelik, Ph.D., whose telephone number is (571) 272-0801. The examiner can normally be reached Monday through Friday, 8:30 am - 5:00 pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Anne Marie Grunberg, can be reached at (571) 272-0975.

The central fax number for official correspondence is (571) 273-8300.

Patent applicants with problems or questions regarding electronic images that can be viewed in the Patent Application Information Retrieval system (PAIR) can now contact the USPTO's Patent Electronic Business Center (Patent EBC) for assistance. Representatives are available to answer your questions daily from 6 am to midnight (EST). The toll free number is (866) 217-9197. When calling please have your application serial or patent number, the type of document you are having an image problem with, the number of pages and the specific nature of the problem. The Patent Electronic Business Center will notify applicants of the resolution of the problem within 5-7 business days. Applicants can also check PAIR to confirm that the problem has been corrected. The USPTO's Patent Electronic Business Center is a complete service center supporting all patent business on the Internet. The USPTO's PAIR system provides Internet-based access to patent application status and history information. It also enables applicants to view the scanned images of their own application file folder(s) as well as general patent information available to the public.

For all other customer support, please call the USPTO Call Center (UCC) at 800-786-9199.

January 28, 2009

/Anne R. Kubelik/
Primary Examiner, Art Unit 1638